

United States District Court
Eastern District of California

Ezell Ray Adams,

Plaintiff,

vs.

California Department
of Corrections, et al.,

Defendants.

No. Civ. S 04-1482 DFL PAN P

Findings & Recommendations

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Plaintiff is a prisoner prosecuting this civil rights action without counsel. Defendants have filed and served an answer.

Plaintiff seeks voluntary dismissal with prejudice with an order directing his transfer to a non-smoking prison facility or voluntary dismissal without prejudice if the court cannot order plaintiff's transfer. Defendants have filed a notice they do not oppose dismissal without prejudice.

Accordingly, I recommend this action be dismissed without prejudice. See Fed. R. Civ. P. 41(a)(2).

1 Pursuant to the provisions of 28 U.S.C. § 636(b)(1), these
2 findings and recommendations are submitted to the United States
3 District Judge assigned to this case. Written objections may be
4 filed within 20 days of service of these findings and
5 recommendations. The document should be captioned "Objections to
6 Magistrate Judge's Findings and Recommendations." The district
7 judge may accept, reject, or modify these findings and
8 recommendations in whole or in part.

9 Dated: June 2, 2005.

10 /s/ Peter A. Nowinski

11 PETER A. NOWINSKI
12 Magistrate Judge
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